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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/037,702

01/03/2002

Feng Guo

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06/04/2004

VALENCE TECHNOLOGY, INC.
301 CONESTOGA WAY
HENDERSON, NV 89015

EXAMINER

TSANG POSTER, SUSY N

ART UNIT

PAPER NUMBER

1745

DATE MAILED 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/037,702

Applicant(s)

GAO ET AL

Examiner

Susy N Tsang-Foster

Art Unit

1745

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 24 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 705.07(f).

Extensions of time may be obtained under 37 CFR 1.135(a). The date on which the petition under 37 CFR 1.135(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
 2. ☐ The proposed amendment(s) will not be entered because:
 (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ they raise the issue of new matter (see Note below);
 (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
 4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 18

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
 10. ☒ Other: See Continuation Sheet

Continuation of 3. Applicant's reply has overcome the following rejection(s). The previous rejections under 35 USC 112 2nd paragraph are withdrawn in view of applicant's amendment.

Continuation of 10. Other: The amendment filed on 5/24/2004 was entered because it appeared to simplify the issues for appeal although claim 16 is awkwardly written. In claim 16, the preamble states "A method for preventing breakdown by overcharge to an electrochemical breakdown voltage in an electrochemical cell comprising a lithium manganese oxide cathode active material, an anode, and an electrolyte solvent" is awkwardly written because it is unclear what breakdown the method is preventing. The previous version of claim 16 recites "A method for preventing breakdown of a lithium metal oxide cathode active material in an electrochemical cell by overcharge to an electrochemical breakdown voltage." The Examiner is interpreting claim 16 as a method for preventing breakdown of a cathode active material by overcharge to an electrochemical breakdown voltage in an electrochemical cell comprising a lithium manganese oxide cathode active material, an anode, and an electrolyte solvent."

Claim 16 remains rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kita et al. (U.S. Pat. No. 5,065,954) for reasons given in paragraph 6 of the previous final office action. As stated in paragraph 6 of the previous final office action, Kita et al. disclose an electrochemical cell having an electrolyte comprising a solute, solvent, and an additive, where the solute can be LiClO_4 , LiAsF_6 , or LiPF_6 (col. 1, lines 12-16), and the additive can be triethylamine in combination with a dialkylamide such as N, N-dimethylacetamide (col. 2, lines 10-15 and col. 3, lines 33-63) and that the electrochemical cell can be Li/MnO_2 such that LiMnO_2 (which is a lithium manganese oxide) is formed during cycling of the electrochemical cell. Applicant's main argument in the amendment filed 5/24/2004 is that the Kita does not anticipate the present invention because Kita et al. do not disclose, suggest or teach, specifically or inherently, the lithium manganese oxide material. Applicant's statement contradicts applicant's statement on page 6 that on cycling such cell of Kita would form LiMnO_2 and that such material is structurally dissimilar to the lithium ion cathode material LiMnO_2 (spinel). In response to applicant's assertions, LiMnO_2 formed by cycling of the Kita et al battery is a lithium manganese oxide material as claimed in claim 16. Claim 16 recites "lithium manganese oxide cathode active material" and does not recite " LiMnO_2 (spinel)". Applicant is arguing a feature that is not claimed. Nevertheless, during cycling of the Kita et al battery, when $X=1$, the formula becomes LiMnO_2 which is identical to the material that applicant asserts is the present invention that is not claimed. However, it is noted that LiMnO_2 does not appear to have a spinel structure as asserted by applicant.

Any inquiry concerning this communication or earlier communications should be directed to examiner Susy Tsang-Foster, Ph.D. whose telephone number is (571) 272-1293. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at (571) 272-1292.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

st/ *Susy Tsang-Foster*

Susy Tsang-Foster
Primary Examiner
Art Unit 1745